

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

GEORGE J. SEBASTIAN,

Petitioner,

v.

JOE BIDEN et al,

Respondent.

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Case No. CIV-24-936-HE

REPORT AND RECOMMENDATION

Petitioner, a prisoner appearing *pro se*, has filed a Petition for Writ of Habeas Corpus (ECF No. 1). United States District Judge Joe Heaton has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). In accordance with that referral, a review of the initial pleadings was conducted. The undersigned found Petitioner's initiating documents to be deficient and entered an Order notifying Petitioner that the Petition (ECF No. 1) was not on the proper form and the Application (Motion) for Leave to Proceed *in Forma Pauperis* (ECF No. 2) lacked the necessary financial information. *See* ECF No. 8.

The Petitioner was ordered to cure these deficiencies by September 30, 2024, and advised that if the deficiencies were not cured, the undersigned would recommend the dismissal of the action without prejudice. Petitioner was provided with the necessary forms to enable him to comply with this order. Further, Petitioner was warned that failure to comply with this Order may result in the dismissal of this action without prejudice to re-filing. *See Id* and Staff notes dated 09/12/2024.

A review of the court file indicates that as of this date, the Petitioner has failed to comply, cure the deficiencies, show good cause for his failure to do so, or request an extension of time to comply with the Court's order. Despite filing two (2) unrelated Motions (ECF Nos. 9 and 10), Petitioner has not specifically responded to the Court's order in any way. Further, there is no indication from the docket sheet that Petitioner did not receive the Court's previous Order which was mailed to Petitioner's address of record. *See Id* and LCvR 5.4.(a).

The undersigned finds that Petitioner's failure to comply with the Court's Order, in light of the Court's right and responsibility to manage its cases, warrants dismissal of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n.2, 1162 (10th Cir. 2007) (*sua sponte* dismissal for failure to comply with Court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing actions without prejudice for failure to comply).

RECOMMENDATION

Based on the foregoing findings, it is recommended that this action be **DISMISSED without prejudice** for Petitioner's failure to comply with this Court's order. Adoption of this Recommendation would render Petitioner's Motions (ECF Nos. 9 and 10) moot.

Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **November 4, 2024**, in accordance with 28

U.S.C. § 636 and Federal Rules of Civil Procedure 72. Petitioner is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation terminates referred to the undersigned magistrate judge in the captioned matter.

ENTERED on October 17, 2024.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE